



EX PARTE OR LATE FILED

Luisa L. Lancetti
Filer
U.S. District Court, D.C.

401 9th Street NW, Suite 400
Washington, DC 20004
Voice: 202-585-1921
Fax: 202-585-1892

ORIGINAL

September 24, 2003

Via Electronic Submission

Ms. Marlene H. Dortch, Secretary
Federal Communications Commission
445 12th Street SW,
Washington, DC 20554

RECEIVED

SEP 24 2003

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

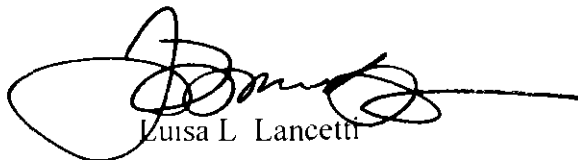
RE **Ex Parte Communication**
Telephone Number Portability, CC Docket 95-116

Dear Ms. Dortch:

This letter serves as notification that on September 23, 2003, Luisa Lancetti representing Sprint Corporation, and Thomas Sugrue representing T-Mobile Corporation met with Christopher Libertelli, Legal Advisor to Chairman Powell, to discuss LEC – CMRS porting issues pending in the above referenced proceeding. A copy of the *ex parte* material discussed at the meeting and distributed by Sprint and T-Mobile are attached hereto.

Pursuant to Section 1.1206 of the Commission rules, this letter is being electronically filed with your office. Please associate this letter with the file in the above referenced proceeding.

Respectfully submitted.



Luisa L. Lancetti

Attachments

cc Christopher Libertelli
Thomas Sugrue

No. of copies rec'd _____
List A B C D E _____

2

Wireless LNP Implementation

(CC Docket No. 95-116)

LEC-CMRS Porting Issues

Sprint Corporation

September 3, 2003

EXECUTIVE SUMMARY

Sprint asks the FCC to declare:

- LECs may not require wireless carriers to obtain numbers in a rate center as a condition for LEC-to-wireless porting (the “rate center” limitations);
- LECs may not defer LEC-to-wireless porting pending negotiation, arbitration and PUC approval of an interconnection agreement (the “Section 252 contract” limitation);
- LECs may not condition LEC-to-wireless porting based on wireless carrier converting from Type 2 LATA tandem connection to end office connections (the “direct interconnection” limitation); and
- LECs may not refuse to honor Sprint PCS’ bona fide requests that comply with FCC orders (BFR validity).

WIRELESS LNP GENERALLY

- Wireless LNP provides added consumer choices, including new opportunities for ILEC customers, and FCC adopted WLNP rule in part to facilitate intermodal competition.
- LEC LNP duty is imposed by statute, and only limitation is technical infeasibility. *See* 47 U.S.C. § 252(b)(2). LECs are obligated to port to LNP-capable carriers, and there is no technical issue preventing this.
- Many ILECs have announced they are imposing – unilaterally – additional conditions on LEC-to-wireless ports so as to limit ability of their customers to port.
- FCC intervention is imperative to ensure that consumers – and FCC – expectations regarding LNP are met in November.

THE “RATE CENTER” LIMITATION

- Many rural ILECs will not permit their customers to port their LEC number unless the wireless carrier has its own set of telephone numbers in each rate center.
 - Large numbers of LEC customers would be unable to port under this ILEC restriction.
- Whether or not wireless carriers have numbers (customers) in an ILEC rate center has nothing to do with the technical feasibility of LEC-to-wireless ports. As a LEC carrier, Sprint can confirm this fact.
- This ILEC position would force wireless carriers to obtain/waste scarce telephone numbers and delay porting availability as wireless carriers obtain/activate additional numbers.
 - Sprint PCS estimates it would have to obtain over 9 million additional numbers it does not need if required to obtain 1,000s block numbers in every ILEC rate center.

THE STATE-APPROVED SECTION 252 CONTRACT LIMITATION

- Many ILECs are refusing to begin porting unless wireless carrier “agrees” to interconnection negotiations/arbitration and PUC approves the contract.
- This ILEC “precondition” is not required:
 - Most carriers today interconnect indirectly w/o a contract and porting does not change situation – just as contracts did not suddenly become necessary when wireless pooling began.
 - Interconnection contracts for LNP are not required by law. Porting – customer transfer of telephone number – is not interconnection. In 1996 Act, Congress rejected proposal to require interconnection contracts for LNP.
 - ILECs can request interconnection negotiations at any time; they simply cannot tie availability of porting with PUC approval of any contract.
- This ILEC precondition would negatively impact LNP:
 - Availability of porting would be delayed needlessly, with unnecessary costs imposed on all parties.
 - Difficult to implement as a practical matter. How is retail employee to know whether a contract has been executed and PUC approved – and whether the customer can therefore port?
 - Invites disparate PUC decisions involving the same FCC rule and federal porting requirement.

THE “DIRECT INTERCONNECTION” LIMITATION

- Many rural ILECs are refusing to begin porting unless wireless carrier “agrees” to interconnect directly with the rural ILEC on an end-office basis – even when direct connection cannot be cost justified because of small amounts of traffic exchanged.
- Whether a LEC and wireless carrier interconnect directly or indirectly has nothing to do with technical feasibility of LEC-to-wireless porting.
- FCC would have to change its interconnection rules (complete new NPRM) because under Rule 20.11, it is wireless carrier (not LEC) that gets to choose interconnection arrangement (*e.g.*, Type 2 LATA tandem connection).
- LECs sometimes refer to this limitation as a “point of presence” requirement. Wireless carrier’s “presence” is providing service in a rate center.
- LNP cannot be basis for requiring wireless carriers to redesign their networks and interconnection arrangements so as mirror landline networks.

VALIDITY OF WIRELESS CARRIER BFRs

- Many rural ILECs have refused to honor Sprint PCS' LNP bona fide requests (BFRs), asserting they are incomplete and invalid.
- FCC has ruled that a valid BFR must contain three components:
 - 1) “[S]pecifically request portability;”
 - 2) “[I]dentify the discrete geographic area covered by the request;” and
 - 3) “[P]rovide a tentative date by which the carrier expenses to utilize number portability to port prospective customers.” *Fourth LNP Order* at ¶ 10 (June 18, 2003).
- Sprint's BFR forms – based on forms LNP Administration Working Group has approved – meet this FCC requirement and should be confirmed as sufficient.

ILEC ARGUMENTS OPPOSING LEC-CMRS PORTING ARE UNFOUNDED

- Claim: The rating of calls to ported numbers will change causing customer confusion.

Response: LECs rate calls as local or toll by comparing the NPA-NXX of calling and called numbers. Because rate center association of a ported number does not change, the rating of calls as local or toll cannot possibly change.

- Claim: ILECs will incur increased transport costs for calls to ported numbers.

Response: Any increased costs are due to competition and interconnection rules – not LNP rules. ILECs will incur increased costs because calls to ported numbers are delivered to a different network rather than completed within ILEC's own network. *But* an ILEC's transport costs for ported number calls are the same as its costs for calls to non-ported local wireless numbers.

- Claim: LEC-wireless porting is not competitively neutral because LEC rate centers are smaller than wireless calling areas:

Response: Size of rate centers is a matter LECs can control by the rate plans they develop. Besides, ILECs have already conceded they can fix any "disparity" by consolidating their rate centers. *See First Wireless Wireline Integration Report*, App. D at 41.

CONTINUED

- Claim: Wireless carriers want ILECs to provide location portability.

Response: These ILECs confuse handset mobility with location portability. As ILECs have already recognized, because wireless “involves terminal mobility, there is no technical requirement for association of the telephone number and a geographic location of the user.” *First Wireless Wireline Integration Report*, App. D at 41.

Location portability involves a change in the rate center association of a number and is generally implemented w/o any change in service provider. Wireless carriers are not asking LECs to provide location capability; they agree that a ported number will always remain rated in its original rate center.

In contrast, the Act requires LECs to support service provider portability – defined as the ability of a customer to change carriers while “at the same location.” 47 U.S.C. § 153(30). So long as a wireless carrier provides its services at a customer’s location, the ILEC must allow its customer to port.

Wireless service, of course, involves terminal mobility. But the cost of locating the wireless customer and delivering calls to him is borne entirely by the wireless carrier.

- ILECs have successfully rated and routed wireless calls for 20 years. Nothing changes if wireless customers happen to use ported vs. non-ported numbers.

FCC LEGAL AUTHORITY

- Administrative Procedures Act (APA) authorizes FCC to “issue a declaratory order to terminate a controversy or remove uncertainty,” with Congress further specifying that declaratory rulings have “like effect as in the case of other orders.” 5 U.S.C. § 554(e).
- LEC LNP duty is imposed by statute, and FCC has ample authority to interpret the Act.
- Courts have held that rule interpretation *via* declaratory ruling is “well within the scope of the familiar power of an agency to interpret the regulations within the framework of an adjudicatory proceeding.” *British Caledonian Airways v. CAB*, 584 F.2d 982, 993 (D.C. Cir. 1978).
- Declaratory ruling proceedings, like proceedings involving an “interpretative rule,” are exempt from APA’s notice and comment rulemaking requirements. See 5 U.S.C. § 553(b)(3)(A); *Sanyo Mfg.*, 3 FCC Rcd 1864 ¶ 6 (1988), citing *Chisholm v. FCC*, 538 F.2d 349, 365 (D.C. Cir. 1976). While not required, FCC here published its public notices in the Federal Register.
- The comments and extensive *ex partes* confirm that LNP declaratory rulings would both “terminate a controversy” and “remove uncertainty.”
- *Sprint v. FCC*, 315 F.3d 369 (D.C. Cir. 2003) confirms FCC authority to issue declaratory rulings to interpret statutes and rules. Court held only that FCC may not change a rule adopted following NPRM w/o conducting new NPRM. Wireless carriers are not asking FCC to change any rule, only to interpret and clarify rules.
- “Only result” of commencing a new NPRM now would be “delay while the Commission accomplished the same objective under a different label. Such empty formality is not required where the record demonstrates that the agency in fact has had the benefit of petitioners’ comments.” *Chisholm*, 538 F.2d at 364-65.

Intermodal Local Number Portability

Facilitating Customer Choice



**Ex Parte Presentation
in
CC Docket No. 95-116**

September 2003

RATE CENTER ISSUES

Solution Should Enhance, Not Inhibit, Customer Choice

INTERCONNECTION AGREEMENTS

SLAs are sufficient to facilitate portability

INTERMODAL PORTING INTERVAL

Portability should be simple and efficient for customers

RATE CENTER ISSUES

Solution Should Enhance, Not Inhibit, Customer Choice

- The FCC ordered CMRS to provide number portability based, in part, upon findings that it would promote competition between wireless and wireline carriers.
 - The FCC found that “as more consumers choose to use wireless instead of wireline services, the inability to transfer that wireline number to a wireless service provider may slow the adoption of wireless by consumers that wish to keep the same telephone number.”
- States support full intermodal competition.
 - The New York Dept. of Public Service concluded that “artificial barriers to intermodal competition should not be condoned” and the FCC should reaffirm that a wireline carrier must port a customer’s telephone number if a wireless carrier’s serving area overlaps the rate center of the wireline carrier.
 - The California PUC urges the FCC to require wireline carriers to port their customer’s numbers to the facilities of the wireless carrier the customer chooses.
- Wireless is emerging as a leading competitive alternative for ILEC services – especially for the residential market
- The FCC and the States have it right intermodal LNP will promote competition in local markets by enabling more consumers to switch their service from LECs to CMRS providers

RATE CENTER ISSUES

Adopting the ILEC position will hinder competition and promote NANP exhaust

- It is technically and operationally feasible for a customer to port a number from a LEC to a CMRS Provider so long as
 - the serving LEC switch is LNP capable, and
 - CMRS provides its services in the LEC rate center.
- Some ILECs want to limit the ability of many of their customers to port their numbers to CMRS providers by refusing to port unless the CMRS provider also
 - interconnects directly with the serving LEC end office, and
 - first obtains its own set of numbers in the rate center.
- Unless the FCC rejects the ILECs' position, NANP exhaust will be significantly accelerated because CMRS would be forced to obtain numbers in every rate center within the top 100 MSAs.

RATE CENTER ISSUES

ILEC objections are factually inaccurate

- ILEC additional “conditions” are artificial roadblocks to LNP. They are not necessary to ensure technical or operational feasibility of LNP.
 - Claim #1: the wireless carrier must have its own facilities or POI in every rate center. The FCC has rejected the claim that competitive carriers must mirror the ILEC’s network by establishing POIs in every rate center, which would unnecessarily require inefficient network design.
 - Claim #2: the wireless carrier must have numbering resources (NPA-NXXs) in each rate center to provide local service. For numbering efficiency, wireless carriers do not obtain numbering resources in every rate center but do obtain resources to provide local service to almost all its local serving area.
 - Claim #3: unless restricted, wireless-wireline portability will cause significant competitive neutrality problems. The great majority of intermodal porting will likely be from wireline to wireless, not wireless to wireline. In any event, wireless carriers take numbers in most local calling areas, although not in each rate center, for their own business reasons. Thus, as a practical matter, there should be few problems with porting from wireline to wireless.
- The Bottom-Line: In order to ensure that all LEC customers, not just a few, have the ability to port their numbers to CMRS providers, the FCC must reject the additional “conditions” that some ILECs are attempting to impose.

INTERCONNECTION AGREEMENTS

SLAs are legally sufficient to facilitate portability

- There is no legal reason why carriers must have interconnection agreements to facilitate portability.
 - A majority of commenters recognize that carriers do not need interconnection agreements to port numbers.
 - The '96 Telecom Act does not require wireless carriers to negotiate amendments to interconnection agreements solely for the purpose of number portability.
 - Portability does not involve interconnection per se between the two porting carriers because porting has no effect on routing or rating.

INTERCONNECTION AGREEMENTS

SLAs are sufficient to address all relevant issues

- There is no practical reason why carriers must have interconnection agreements to support number porting
 - Routing and call completion work today – portability does not impact routing and call completion within local calling areas
 - The FCC, not the states, enforces the portability requirements, but the Section 252 negotiation procedure would needlessly drag the states into the process and increase delays and costs.
 - A number of major ILECs, including Sprint and Verizon, agree that interconnection agreements are not necessary, but other ILECs are refusing to even enter into negotiations about SLAs to implement portability

INTERMODAL PORTING INTERVAL

Portability should be simple and efficient for customers

- The FCC should resolve the porting interval debate.
- The CMRS providers have agreed to a wireless to wireless porting interval of 2 ½ hours.
- The wireline porting interval is currently 4 days.
 - A porting interval of 4 days is unnecessarily long and will result in customer confusion and inconvenience.
- T-Mobile has proposed a compromise intermodal porting interval of 2 days
 - A porting interval of 2 days would be significantly less burdensome for wireline carriers to implement than a 2 ½ hour interval
- Some transition may be necessary past November of 2003

CONCLUSION

FCC action can remove the obstacles to Universal Portability

- The FCC should resolve the rate center issue by requiring wireline carriers to accept a customer's request to port-out to a wireless carrier of his or her choice.
- The FCC should resolve the SLA/interconnect agreement controversy by clarifying that interconnection agreements are not necessary and that SLA agreements are sufficient to support porting.
- The FCC should resolve the porting interval debate. A porting interval of 4 days is unnecessarily long and will result in customer confusion and inconvenience.